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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,147	02/06/2002	Mark Duffy	11835-027001	7506
26161	7590	06/20/2006	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022				POLLACK, MELVIN H
			ART UNIT	PAPER NUMBER
			2145	

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/068,147	DUFFY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Melvin H. Pollack	2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 10 April 2006.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-27 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-27 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 10 April 2006 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input checked="" type="checkbox"/> Other: <u>see attached office action</u> .

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.
2. In the response to the last office action, the applicant changed the scope of the claims by adding multiple limitations to all independent claims, and by adding dependent claims. The examiner has determined that the change in scope is materially sufficient to necessitate search and consideration of the added limitations and/or clarifications. As a result, a final amendment is necessitated even if the examiner provides a new art rejection. The examiner acknowledges that no new matter has been added by this amendment.
3. The new title, abstract, and drawings are accepted. All related objections are withdrawn.
4. The original rejection has been withdrawn in favor of a new rejection in light of the amendment.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 7-12, 14, 15, 18-23, 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Babu et al. (6,122,639) in view of Chao et al. (5,964,837) and Hein et al. (2002/0178275).

3. For claims 1, 19, 23, Babu teaches a method (abstract; col. 1, line 1 – col. 4, line 65) comprising:

- a. Collecting information in a network device (Figs. 1 and 2, #118), the collected information representing a plurality of events (Table 4), the events having taken place in an event order (col. 14, lines 25-30);
- b. Determining to transmit a subset of the collected information to a collection system (Fig. 4A, #402; col. 12, lines 45-50), the subset having a plurality of events (Table 4); and
- c. Determining in the network device (col. 9, lines 5-10) a transmission order in which to transmit the elements of the subset (col. 12, line 50 – col. 13, line 5).

4. Babu does not expressly disclose determining in the network device when to transmit. Chao teaches a method and system (abstract) of monitoring network nodes (col. 1, line 1 – col. 2, line 55) in which the network device determining when to transmit (col. 6, lines 55-65) is added to a system wherein the data collector determines when to transmit (col. 6, lines 40-55). At the time the invention was made, one of ordinary skill in the art would have added Chao's "event mode" to Babu's "polling mode" in order to provide the collector with the best option for collecting (col. 2, lines 30-55).

5. Babu and Chao do not expressly disclose the transmission order being independent of the event order. Hein teaches a method and system (abstract) of monitoring event datum (Paras. 1-9 and 16) and sending said datum to a central source (Fig. 5), wherein the subset is transmitted on the basis of priority and weighted factors (Paras. 32-39). At the time the invention was made, one of ordinary skill in the art would have added Hein's prioritization scheme to Babu and Chao

systems (Paras. 53-57) in order to handle multiple streams of data without overloading a system (Paras. 17 and 18).

6. For claims 2, 20, Babu teaches that the collected information comprises values stored in counters (col. 12, lines 59-64).

7. For claims 3, 21, Babu teaches that the subset represents a value of a counter (Fig. 3, #308).

8. For claims 4, 22, Babu teaches that the subset represents values of multiple counters (Fig. 4A, #410).

9. For claim 5, Babu teaches determining when to send is user-configurable (col. 5, lines 50-55).

10. For claims 7, 25, Babu teaches tagging the value of the collected information with an identifier (Table 1).

11. For claim 8, Babu teaches using a locally significant tag value as the identifier (Table 2).

12. For claim 9, Babu teaches that the locally significant tag value is an array index (col. 9, lines 45-55).

13. For claim 10, Babu teaches associating the locally significant value of the tag with the globally significant value of the identifier (Fig. 3) and announcing the association through a communications channel of a computer network system (Fig. 4C).

14. For claim 11, Babu teaches that a communication channel used to announce tag and identifier associations is the channel used to transmit collected information (Fig. 1, #120).

15. For claim 12, Babu teaches change detection systems (Fig. 2, #30) and methodology (col. 13, lines 30-40), but does not expressly disclose that the collected information that is unchanged

is not transmitted from the network device to the collection system. Chao teaches that “event messages are emitted only whenever changes are detected (col. 6, lines 58-59).” At the time the invention was made, one of ordinary skill in the art would have combined the features in order to reduce traffic (col. 6, line 66 – col. 7, line 20).

16. For claim 14, Babu does not expressly disclose that the collected information is reported periodically. Chao teaches this limitation (Fig. 10, #55 and 56). At the time the invention was made, one of ordinary skill in the art would have added this limitation in order to periodically determine the status of the node (col. 12, lines 35-60).

17. For claim 15, Babu teaches establishing a signaling phase between the network device and the collection system prior to sending the collected information (Fig. 4B).

18. For claim 18, Babu teaches that the collected information comprises event logging records (Fig. 2, #22).

19. For claim 26 and 27, Babu teaches determining in the network device (col. 9, lines 5-10) the subset of the collected information to be transmitted at a given time (col. 12, line 50 – col. 13, line 5).

20. Claims 6, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Babu and Chao and Hein as applied to claims 1, 19 above, and further in view of Darcy et al. (6,748,445).

21. For claims 6, 24, Babu and Chao do not expressly disclose that determining when to send comprises determining a low peak period of a network operation, and sending the subset during the low peak period. Darcy teaches a method (abstract) of network monitoring and collected data transmission (col. 1, line 1 – col. 2, line 55) in which the traffic is transmitted at low peak

periods (col. 6, lines 54-65). At the time the invention was made, one of ordinary skill in the art would have added Darcy transmission methods to Babu and Chao in order to avoid network congestion (col. 1, lines 50-60).

22. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Babu and Chao and Hein as applied to claim 1 above, and further in view of Clayton et al. (6,574,610).

23. For claim 13, Babu and Chao do not expressly disclose sending acknowledgements from the collection system to the network device when the collection system receives the collected information. Clayton teaches a method (abstract) of network devices (Fig. 2, #210) collecting data (col. 1, lines 1-40; col. 2, line 5 – col. 3, line 45) to a collection system (Fig. 2, #230) wherein an acknowledgement message is transmitted in response (col. 5, lines 11-23). At the time the invention was made, one of ordinary skill in the art would have added Clayton's acknowledgement messaging to Babu and Chao in order to ensure reception of the collected data (col. 5, lines 20-22).

24. Claims 16, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Babu and Chao and Hein as applied to claim 15 above, and further in view of Porras et al. (6,484,203).

25. For claim 16, Babu teaches that the signaling phase includes exchanging information relating to transfer of the collected information sent between the network device and the collection system through a communications channel (Fig. 3), but does not expressly disclose that the signaling phase includes exchanging information relating to authentication of the collected information sent between the network device and the collection system through a

communications channel. Chao does not expressly disclose authentication. Porras teaches a method (abstract) of computer network event monitoring (col. 1, line 1 – col. 2, line 25) wherein authentication information is exchanged (col. 7, lines 55-65; col. 9, line 65 – col. 10, line 20). At the time the invention was made, one of ordinary skill in the art would have added Porras authentication to Babu and Chao in order to protect networks from attack (col. 1, lines 40-50).

26. For claim 17, Babu and Chao do not expressly disclose that the communications channel comprises a secure connection. Porras teaches this limitation (col. 10, lines 7-12). At the time the invention was made, one of ordinary skill in the art would have added Porras authentication to Babu and Chao in order to protect networks from attack (col. 1, lines 40-50).

***Conclusion***

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. They regard further teachings on reporting of measured items to a central system.

28. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin H. Pollack whose telephone number is (571) 272-3887. The examiner can normally be reached on 8:00-4:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MHP  
15 June 2006



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SUPERVISORY PATENT EXAMINER